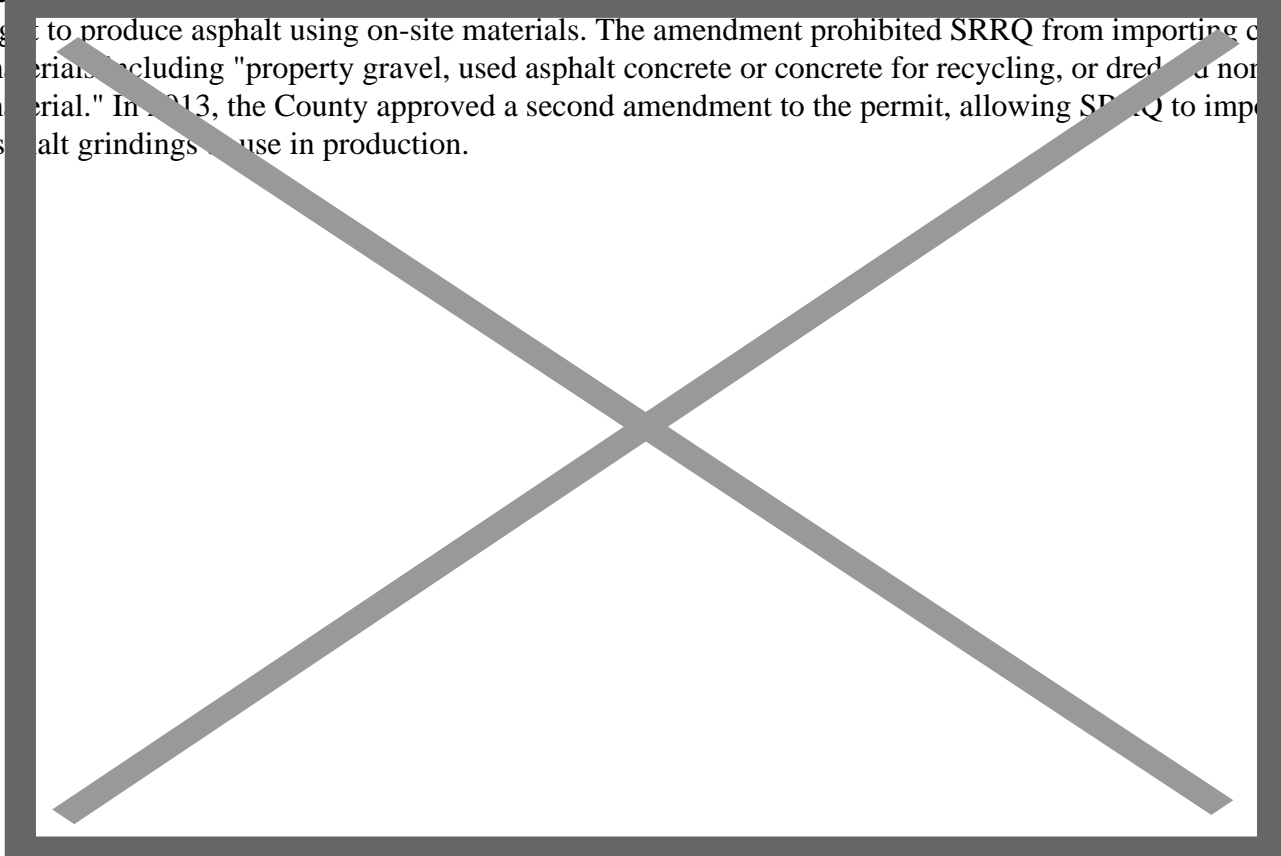


## [Blogs](#)

August 08, 2019

### Permit Amendment Unlawfully Expanded Nonconforming Use

A municipality's approval of a permit amendment allowing a quarry to import asphalt for recycling improperly expanded the quarry's nonconforming use, the First District Court of Appeal ruled in *Point San Pedro Road Coalition v. County of Marin*, 33 Cal. App. 5th 1074 (2019). San Rafael Rock Quarry, Inc., operates a quarry in the County of Marin that produces asphaltic concrete. In 1982, the County rezoned the property from "heavy industrial, limited agricultural" to "commercial and residential" use. At that time, the quarry's asphalt production process involved only material mined from the quarry and imported sand. Upon the rezoning, this process became a legal nonconforming use. In 2010, the County amended SRRQ's mining permit, granting SRRQ the right to produce asphalt using on-site materials. The amendment prohibited SRRQ from importing certain materials including "property gravel, used asphalt concrete or concrete for recycling, or dredged sand and material." In 2013, the County approved a second amendment to the permit, allowing SRRQ to import used asphalt grindings for use in production.



The

Point San Pedro Road Coalition challenged the second amendment, arguing the County's approval constituted an expansion or intensification of a nonconforming use prohibited by the County zoning ordinance. The trial court ruled in favor of the Coalition. On appeal, the County and SRRQ conceded that 1) the importation of asphalt grindings was not within the scope of the existing nonconforming use in 1982, and 2) the County was required to make findings that "the activity would not result in the use of the property being 'enlarged, increased, or intensified.'" However, the County and SRRQ contended that the County properly made the required finding because the use of asphaltic grindings did not amount to enlargement, increase, or intensification of the use. SRRQ and the County argued that incorporating recycled asphalt into its process merely allowed SRRQ to maintain sustainable best practices. The appellate court disagreed, reasoning that the new operations did not simply substitute one raw material (sand) for another (asphalt grindings) — it involved new truckloads carrying asphalt grindings to the site, which were unloaded and stockpiled at the site, and screened and crushed, which

required SRRQ to purchase additional machinery. Additionally, the court held the County and SRRQ failed to show the change in use was required for or reasonably related to continuation of the existing nonconforming on-site production. Rather, the change effectively allowed SRRQ to change and expand its nonconforming use in violation of the County zoning ordinance, which prohibited such extension or expansion.

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